

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MILTON FRED HARTENBOWER,
CATHERINE A. HARTENBOWER,
HART ELECTRIC LLC, and H.I.
CABLE LLC d/b/a H.I. HART LLC,

Plaintiffs,

v.

CASE NO. 1:13-CV-02253

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
KATHLEEN SEBELIUS, in her official
capacity as Secretary of the United States
Department of Health and Human Services;
UNITED STATES DEPARTMENT OF
THE TREASURY; JACK LEW, in his
official capacity as Secretary of the
United States Department of the Treasury;
UNITED STATES DEPARTMENT OF
LABOR; and SETH HARRIS, in his
official capacity as Acting Secretary of the
United States Department of Labor,

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION TO EXTEND PRELIMINARY INJUNCTION
AND STAY OF PROCEEDINGS**

Plaintiffs, Milton Fred Hartenbower and Catherine Hartenbower, and their businesses, Hart Electric, LLC and H.I. Hart, LLC, by and through their undersigned counsel, hereby submit this unopposed motion to extend both the preliminary injunction and stay of proceedings currently in place in this case pending the resolution of two cases before the United States Supreme Court: *Sebelius v. Hobby Lobby Stores, Inc.*, No. 13-354 (S. Ct.), *cert. granted*, Nov. 26, 2013, and *Conestoga Wood Specialties Corp. v. Sebelius*, No. 13-356 (S. Ct.), *cert. granted*,

Nov. 26, 2013. These two cases involve claims that are substantially similar to the legal claims Plaintiffs bring here against the same federal regulations that Plaintiffs challenge here.

On April 18, 2013 (Dkt # 16), this Court entered a preliminary injunction and stay of proceedings in this case pending the disposition of two cases then before the United States Court of Appeals for the Seventh Circuit: *Korte v. Sebelius*, No. 12-3841 (7th Cir.), *consolidated with Grote Indus. LLC v. Sebelius*, No. 13-077 (7th Cir.) According to the April 16, 2013 order, the preliminary injunction and stay of proceedings are to remain in place until thirty days after the issuance of the mandate in these cases.

On November 9, 2013, the Seventh Circuit decided the *Korte* and *Grote* cases. 735 F.3d 654. The court ruled that the contraception mandate substantially burdens the religious exercise of the plaintiff corporations and their owners under the Religious Freedom Act. The court further ruled that the mandate does not serve a compelling governmental interest and is not the least restrictive means of advancing any such interest. The Seventh Circuit remanded the cases with instructions to enter preliminary injunctions barring enforcement of the contraception mandate against the plaintiffs.

On December 31, 2013, the mandate was issued in *Korte* and *Grote*. (A copy of the Notice of Issuance of Mandate is attached hereto as Exhibit A.)

Plaintiffs move this Court to extend the preliminary injunction and stay of proceedings in this case until forty-five days after the Supreme Court issues judgments in *Hobby Lobby* and *Conestoga Wood*. In these cases, the Supreme Court will address legal issues that are substantially similar to those presented in this case, involving facts that are analogous in many respects to those in this case, challenging the same regulations that are challenged in this case, and raising claims that are largely indistinguishable from those in this case brought against the

same Defendants as those in this case. Even if the Supreme Court's rulings do not entirely dispose of this case, the outcome of the decisions in *Hobby Lobby* and *Conestoga Wood* are likely to affect substantially the outcome of this litigation.

Defendants have advised undersigned counsel that they do not oppose this motion.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask this Court to grant their unopposed motion for an extension of the current preliminary injunction, enjoining Defendants, until forty-five days after the Supreme Court issues judgment in *Hobby Lobby* and *Conestoga Wood*, from enforcing against Plaintiffs, their employee health plan(s), or their insurer(s) the statute and regulations that require Plaintiffs to provide employees insurance coverage for "[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," 77 Fed. Reg. 8725, as well as any penalties, fines, assessments, or enforcement actions for non-compliance, including those found in 26 U.S.C. §§ 4980D, 4980H, and 29 U.S.C. §§ 1132, 1185d.

Plaintiffs further respectfully ask this Court to stay all proceedings in this case until forty-five days after the Supreme Court issues judgment in *Hobby Lobby* and *Conestoga Wood*.

Respectfully submitted, January 10, 2014.

Edward L. White III (MI Bar No. P62485)
American Center for Law & Justice
5068 Plymouth Road
Ann Arbor, Michigan 48105
Tel. 734-662-2984; Fax. 734-302-1758
ewhite@aclj.org

Carly F. Gammill (TN Bar No. 28217)
American Center for Law & Justice
188 Front St., Ste. 116-19
Franklin, Tennessee 37064
Tel. 615-415-4822; Fax: 615-599-5189
cgammill@aclj-dc.org

/s/ Geoffrey R. Surtees
Geoffrey R. Surtees (KY Bar No. 89063)
Francis J. Manion (KY Bar No. 85594)
American Center for Law & Justice
PO Box 60
6375 New Hope Road
New Hope, Kentucky 40052
Tel. 502-549-7020; Fax. 502-549-5252
gsurtees@aclj.org
fmanion@aclj.org

Erik M. Zimmerman (VA Bar No. 71586)
American Center for Law & Justice
1000 Regent University Drive
Virginia Beach, Virginia 23464
Tel. 757-226-2489; Fax. 757-226-2836
ezimmerman@aclj.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Geoffrey R. Surtees, counsel for Plaintiffs, hereby certify that on January 10, 2014, a true and correct copy of the foregoing and attachments were caused to be filed electronically with this Court through the CM/ECF filing system. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's CM/ECF system, including the following counsel for Defendants. Parties may access this filing through the Court's CM/ECF system.

Michelle Renee Bennett
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20001
202 305 8902
Email: michelle.bennett@usdoj.gov

Benjamin Leon Berwick
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Av., NW
Suite 7306
Washington, DC 20012
202 305 8573
Email: benjamin.l.berwick@usdoj.gov

/s/ Geoffrey Surtees
Geoffrey R. Surtees
American Center for Law & Justice
PO Box 60
6375 New Hope Road
New Hope, Kentucky 40052